



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

September 18, 1947

Hon. C. H. Cavness
The State Auditor
Austin, Texas

Opinion No. V-384

Re: Authority of State
Auditor to pay sal-
aries from Item 10
of the appropriation
to the State Audi-
tor's Department in
Senate Bill 391,
50th Legislature.

Dear Mr. Cavness:

Your request for an opinion reads as fol-
lows:

"I shall greatly appreciate your opinion as to whether or not Sub-section 14f, relating to 'Contingent Expenses', in the General Provisions of Senate Bill No. 391 (the Departmental Appropriation Bill) as passed by the 50th Legislature, means that salaries or wages cannot be paid from Item 10 of the appropriation to the State Auditor's Department."

The Departmental Appropriation Bill for the State Auditor which was passed by the 50th Legislature reads, in part, as follows:

"

For the Years Ending	
August 31,	August 31,
1948	1949

Maintenance and Miscel-
laneous

9. Office Supplies, print-
ing and binding, post-
age, express, tele-
phone, telegraph, fur-
niture and equipment,
bond premiums, travel-
ing expense, and mis-
cellaneous

\$33,750.00 \$33,750.00

10. Expense of auditing revenues from Corporation Franchise Taxes, this to be by the State Auditor with operating budget to be approved by the Legislative Audit Committee..74,000.00 74,000.00

Total Maintenance and Miscellaneous 107,750.00 107,750.00 "

Ch. 400, Acts 50th Legislature, Regular Session 1947, page 819, Vernon's Texas Session Law Service.

Subdivision (14)f of the General Provisions to this appropriation bill has a rider reading as follows:

"Contingent Expenses. None of the funds hereinabove appropriated for 'contingent expenses' or 'maintenance and miscellaneous' shall be used for the payment of any salaries unless specifically authorized to be paid in the itemization under the contingent, maintenance and miscellaneous items hereinabove set out and designated therein as 'salaries' 'extra help,' or 'seasonable labor.' "

Ch. 400, Acts 50th Legislature, R. S. 1947, page 938, Vernon's Texas Session Law Service.

Item 10, although listed under the general heading "maintenance and miscellaneous " is not actually an appropriation for either "contingent expenses" or "maintenance and miscellaneous". Subdivision (14)f of the General Provisions of your appropriation bill has reference to the wording of the "itemization" rather than to a general heading. The legislative intent as expressed in item 10 is clearly to the effect that an audit be made of revenues from Corporation Franchise Taxes. This cannot be done without payment of salaries. The appropriation of sufficient funds for such an audit carries with it the implied authority to pay the salaries of an auditor or auditors employed to do the work. This was undoubtedly the intent of the Legislature and that intent will be held to control.

Hon. C. H. Cavness, page 3 (V-384)

39 Tex. Jur. 166.

We have heretofore ruled on a similar question in our Opinion No. V-368, a copy of which is herewith enclosed.

SUMMARY

Item 10 of the General Departmental Appropriation Bill for the State Auditor as passed by the 50th Legislature impliedly authorizes the use of such funds for the payment of salaries and it will control over the General Provisions contained in Subdivision (f) of Section 14 of the rider to said appropriation bill wherein the payment of salaries from funds appropriated for "maintenance and miscellaneous" expense is prohibited. 50th Legislature, R. S. (1947) Ch. 400, Vernon's Texas Session Law Service, pages 819 and 938.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By *Fagan Dickson*
Fagan Dickson
First Assistant

FD:mw

APPROVED:

Pricc Daniel
ATTORNEY GENERAL